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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-908

SHAPE SPA FOR HEALTH AND BEAUTY, INC., ET AL.,
Petitioners,

VS.

LINDA ROUSSEVE, ET AL.,
Respondents

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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ARGUMENT

There is no special or important reason why certiorari should be granted in this case. There is no conflict among the circuits on the Public Accomodations Act coverage issue

decided by the Court of Appeals. Nor does the decision on what is an "other place of . . . entertainment" under the Act conflict with applicable decisions of this Court.

Rather, the basic issue of coverage has already been passed on by the Court in Daniel v Paul, 395 U.S. 298 (1969). The decision by the Court of Appeals represents no more than a case by case process of fleshing out the meaning of 42 U.S.C. § 2000a (b)(3), begun by the Fifth Circuit prior to Daniel v Paul in Miller v Amusement Enterprises, Inc, 394 F. 2d 342 (5th Cir. 1968), and continuing with Smith v YMCA of Montgomery, 462 F.2d 634 (5th Cir. 1972) and United States v De Rosier, 473 F.2d 749 (5th Cir. 1973).

The health studios in question are used by nine to twelve thousand persons a year.

Petitioners actively solicit from the community at large, using modern media to portray their studios as relaxing, recreational and enjoyable places to pass time. They are businesses, geared towards profit, and oiled by providing what the customers want--including "concrete programs of . . .recreation."

These huge operations are hardly the personal service businesses--like barbershops and beauty salons--which Congress exempted from coverage. Nor are their programs designed as therapeutic regimens dedicated to serving physicians in medically prescribed diet control or health care. And petitioner does not suggest otherwise.

Rather, the pitch is that exercise for figure control is work, therefore not pleasure, therefore not

done in a "place of entertainment." The sophristry is apparent to any person who embarks on even a disciplined regime of physical exercise. The weightlifter, while not dismissing the hard work, would hardly deny that his activity is recreational and pleasurable, and the gymnasium a place of recreation and entertainment. The swimmer, while aware of the tedium of laps, would hardly deny that his activity is recreational and pleasurable, and the pool a place of recreation and entertainment.

And petitioners do not contend that members must, on pain of ouster, religiously follow any figure control regime designed for them by the staff. The casual use of the facilities is available

(probably dominant),and is as literally relaxing or recreational as casual weightlifting or swimming.

In a very fundamental sense, petitioners' self-proclaimed and advertised image of themselves as luxurious, relaxing watering-holes or spas for ladies, should estop their protestations against coverage. When petitioners solicit indiscriminately by telephone exchange, and then refuse the woman at the other end of the line if she is black; when petitioners offer trial sessions to all women, and turn away a woman at the door if she is black; when petitioners design their television and newspaper advertisements to appeal to all women's needs, conceits or fantasies, but do not produce for a black woman's needs, a black woman's conceits or a black woman's

fantasies; then petitioners are designedly humiliating black women in places publicly represented to accomodate all women. Congress intended the Public Accomodations Act to end such humiliation. The decision of the Court of Appeals does no more than implement the Congressional purpose in holding petitioners' establishments to be covered by the Act.

CONCLUSION

The Petition for Certiorari offers no special or important reason why this Court should review a clearly correct decision of the Court of Appeals. Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have, on this ____day of March 1976 served three copies of the foregoing opposition on all interested counsel by depositing same in the mail with first class postage prepaid, addressed as follows:

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